

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN MCGRAW,

Case No.: 2:22-cv-01414-APG-NJK

Plaintiff

Order Granting First American's Motion for Summary Judgment

V.

CHARLES KIM, et al.,

Defendants

[ECF No. 96]

8 John McGraw sues the defendants over a failed real estate purchase in which a company
9 he partly owns, Pacific Specialty Insurance Co., invested and lost \$2.2 million that had been
10 placed in escrow. Pacific assigned its rights and interests related to the deal to McGraw. As
11 relevant to this order, McGraw asserts negligence and conversion claims against defendant First
12 American Title Insurance Company based on First American distributing the funds in escrow
13 through a wire transfer despite knowing that McGraw was seeking a temporary restraining order
14 (TRO) to prevent disbursement of the escrow funds.

15 First American moves for summary judgment, contending that no genuine dispute
16 remains that it was not negligent and did not convert the funds because it (1) followed the escrow
17 instructions from the parties to the escrow and (2) disbursed the funds before the state court
18 issued the TRO. First American also seeks attorney's fees based on an indemnification
19 provision.

20 McGraw responds that genuine disputes remain because his attorney contacted First
21 American in the days prior to it disbursing the funds and told First American not to distribute the
22 funds because he was going to seek a TRO. McGraw also contends that First American did

1 nothing to try to get the funds returned after the TRO issued. McGraw did not respond to First
2 American's request for indemnification.

3 The parties are familiar with the facts, so I do not repeat them here except where
4 necessary to resolve the motion. I grant First American's motion because no genuine dispute
5 remains that First American was not negligent and did not convert the escrow funds. I will
6 address attorney's fees if First American files a properly supported motion.

7 **I. ANALYSIS**

8 Summary judgment is appropriate if the movant shows "there is no genuine dispute as to
9 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
10 56(a). A fact is material if it "might affect the outcome of the suit under the governing law."
11 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if "the evidence
12 is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

13 The party seeking summary judgment bears the initial burden of informing the court of
14 the basis for its motion and identifying those portions of the record that demonstrate the absence
15 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
16 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
17 genuine issue of material fact for trial. *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th
18 Cir. 2018) ("To defeat summary judgment, the nonmoving party must produce evidence of a
19 genuine dispute of material fact that could satisfy its burden at trial."). I view the evidence and
20 reasonable inferences in the light most favorable to the non-moving party. *Zetwick v. Cnty. of*
21 *Yolo*, 850 F.3d 436, 440-41 (9th Cir. 2017).

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A. Negligence and Conversion

I previously granted summary judgment in First American’s favor “as to plaintiff John McGraw’s . . . negligence and conversion claims to the extent those claims are based on First American violating the escrow instructions.” ECF No. 60 at 12. But I allowed McGraw’s claims for negligence and conversion to proceed “based on First American violating the state court temporary restraining order” because genuine disputes remained about when the wire transfer was completed vis-à-vis when the state court issued the TRO. *Id.* at 9-10, 12.

8 Now that the parties have conducted discovery, no genuine dispute remains that First
9 American completed the wire transfer before the state court issued the TRO. *See* ECF Nos. 97-3
10 at 5; 97-4 at 3, 5-8; 97-9; 97-11; 97-12 at 3. First American thus could not have breached a duty
11 to comply with the TRO or convert funds in contravention of the TRO, because the escrow funds
12 were no longer in First American’s possession or control by the time the TRO issued. McGraw
13 cites no authority for the proposition that an escrow agent has a duty not to disburse escrow
14 funds when a non-party to the escrow¹ advises the escrow agent that the non-party is going to
15 seek, but has not yet obtained, a TRO. Doing so would instead likely subject the escrow agent to
16 claims against it by the parties to escrow for not following the escrow instructions. *See*
17 *Broussard v. Hill*, 682 P.2d 1376, 1378 (Nev. 1984) (stating that an “escrow agent must strictly
18 comply with the terms of the escrow agreement and may not use the proceeds in any manner that
19 is not authorized by contract or deposit”).

20 Nor has McGraw cited any authority for the proposition that once First American
21 disbursed the funds it had some duty under the TRO to request the receiving bank to send the

²³ ¹ As set forth in my prior order, neither McGraw nor Pacific were parties to the purchase agreement or the escrow instructions. ECF No. 60 at 2-4.

1 funds back. The TRO ordered First American to “refrain from the distribution” of the escrow
2 funds and prohibited First American from “making any determination related to the rights of any
3 entity, individual or party with regards to the subject escrow account.” ECF No. 97-14 at 2. The
4 TRO did not order First American to attempt to retrieve the funds if it had already distributed
5 them. The state court later denied a preliminary injunction as moot “because the subject monies
6 were already transferred.” ECF No. 97-16. There is no evidence that the state court found that
7 First American violated the TRO.

8 And there is no evidence that even if First American had requested the receiving bank to
9 return the wired money, the seller’s bank would have agreed to do so. As explained by Paige de
10 Jong, Vice President and Operations Manager of First American Trust FSB, once the wire is
11 sent, the money is “gone,” and First American “cannot get it back.” ECF Nos. 97-13 at 21; 97-12
12 at 2. According to de Jong, First American could request the money back but First American
13 had “no right to pull it back or any way to pull it back.” ECF No. 97-13 at 21. Rather, the
14 beneficiary bank must receive authorization from its customer because the wire is “final payment
15 to that beneficiary, and now it belongs to them. And whatever happens to that money after they
16 get it, after they receive it in their account, is up to them.” *Id.* at 22. As de Jong explained, this is
17 why wire transfers are used in escrow transactions, because the transfer is “final.” *Id.* at 21.

18 First American did not breach a duty owed to McGraw or Pacific, and First American did
19 not exert wrongful dominion over McGraw’s or Pacific’s funds. *See Foster v. Costco Wholesale*
20 *Corp.*, 291 P.3d 150, 153 (Nev. 2012) (for a negligence claim, duty and breach are required
21 elements); *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 193 P.3d 536, 542 (Nev.
22 2008) (conversion involves an “act of dominion wrongfully exerted” that is “inconsistent with
23 [another’s] title or rights” in the property (quotation omitted)). There is no genuine dispute as to

1 those facts. Consequently, I grant First American's motion for summary judgment on McGraw's
2 negligence and conversion claims.

3 **B. Indemnification**

4 First American requests indemnification under the third-party instructions that Pacific
5 signed when it deposited the \$2.2 million in escrow. McGraw does not respond to this portion of
6 First American's motion. I will address attorney's fees if First American files a properly
7 supported motion under Local Rule 54-14. The parties should confer about a resolution of that
8 issue before First American files a motion.

9 **III. CONCLUSION**

10 I THEREFORE ORDER that defendant First American Title Insurance Company's
11 motion for summary judgment (**ECF No. 96**) is **GRANTED**.

12 DATED this 21st day of January, 2025.

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15 ANDREW P. GORDON
16 CHIEF UNITED STATES DISTRICT JUDGE
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